LIBRARY
SUPREME COURT, U. S.
FILED
FEB 12 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-984

THE WICHITA INDIAN TRIBE OF OKLAHOMA, ETC.,
Petitioners,

v.

THE UNITED STATES OF AMERICA, and
THE KIOWA, COMANCHE AND APACHE TRIBES OF INDIANS,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Claims

BRIEF FOR THE KIOWA, COMANCHE AND APACHE TRIBES OF INDIANS IN OPPOSITION

J. ROY THOMPSON, JR.
400 Union Trust Building
Washington, D.C. 20005
Attorney for Respondents,
The Kiowa, Comanche and
Apache Tribes of Indians.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	1
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
ARGUMENT	5
I. This case presents no conflict of decisions	5
II. There is no important question of federal law involved	5
III. The decision of the Court of Claims is correct	7
A. The decision of the Court of Claims is correct	7
B. The cases relied upon by petitioners do not support late intervention by one claiming adversely to the timely claimant	10
C. The contentions made by petitioners to show error below are insubstantial	15
CONCLUSION	21

APPENDIX

1. Additional Pertinent Provisions of Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. 70, *et seq.*	1a
2. Table Showing Action by the Supreme Court of the United States on All Prior Petitions for Writs of Certiorari to the Court of Claims on Indian Cases Appealed from the Indian Claims Commission	3a
3. S. 1501, 91st Congress, 1st Session	8a
4. Extracts from Code of Federal Regulations, 1949 Edition, Title 25, Indians, Chapter III—Indian Claims Commission, Part 503	10a

TABLE OF CASES

Page

Blackfeet & Gros Ventre Tribes v. *United States*, 162 Ct. Cl. 136 (1963) 4, 10, 11
Joseph Chitto, et al. v. *United States*, 133 Ct. Cl. 643, 138 F.Supp. 253, cert. den. 352 U.S. 841 (1956) 17
Choctaw and Chickasaw Nations, et al. v. *United States*, 34 Ct. Cl. 17, reversed, 179 U.S. 494 (1900) 19
Creek Nation v. *United States*, 370 U.S. 157, reh. denied, 371 U.S. 854, (1962) 5
Hodgson v. *United Mine Workers of America*, 473 F.2d 118 (1972) 20
Kiowa, Comanche and Apache Tribe v. *United States*, 26 Ind. Cl. Comm. 101 (1971) 3
Lipan Apache Tribe v. *United States*, 22 Ind. Cl. Comm. 1 (1969) 2, 10, 13, 14
C. W. McGhee, et al. v. *The Creek Nation and the United States*, 122 Ct. Cl. 380, cert. den. 344 U.S. 856 (1952) 17
Peoria Tribe of Indians of Oklahoma, et al. v. *United States*, 390 U.S. 468 (1968) 5
Seminole Indians of the State of Florida v. *United States*, 200 Ct. Cl. 411, 471 F.2d 614 (1973) 18
Seneca Nation of Indians on the relation of John L. Snyder and Arline A. Friday v. *United States*, 122 Ct. Cl. 163 (1952) 16
Snoqualmie Tribe of Indians v. *United States*, 178 Ct. Cl. 570, 372 F.2d 951 (1967) 4, 10, 11, 12, 13
Clyde F. Thompson, et al. v. *United States*, 122 Ct. Cl. 348, 356, cert. denied, 344 U.S. 856 (1952) 19
United States v. *Esnault-Pelterie*, 303 U.S. 26 (1938) .. 6
United States v. *Kiowa, Comanche and Apache Tribe, et al*, Appeal No. 12-71, June 20, 1973,——Ct. Cl. ——, 479 F.2d 1369 ..... 4, 10
United States v. *Penn. Foundry & Mfg. Co.*, 337 U.S. 198 (1949) 6
United States v. *Seminole Nation*, 299 U.S. 417 (1937) 9
United States v. *Southern Ute Tribe or Band of Indians*, 402 U.S. 159 (1971) 5
United States ex rel. Texas P. Cement Co. v. *McCord*, 223 U.S. 157, (1914) 9
Wichita Tribe, et al. v. *United States*, 89 Ct. Cl. 378 (1939) 19

STATUTES

Page

14 Stat. 717 ..... 3, 4
60 Stat. 1049, 25 U.S.C. 70 ..... 2, 18
60 Stat. 1049, 1050, 25 U.S.C. 70a 8
60 Stat. 1049, 1051, 25 U.S.C. 70h 6
60 Stat. 1049, 1052, 25 U.S.C. 70i 16
60 Stat. 1049, 1052, 25 U.S.C. 70k 2, 8, 11, 15
60 Stat. 1049, 1052, 25 U.S.C. 70l 16, 17
60 Stat. 1049, 1054, 25 U.S.C. 70s(b) 4, 5
60 Stat. 1049, 1054, 25 U.S.C. 70s(c) 4, 6
62 Stat. 928, 28 U.S.C. 1255 6
72 Stat. 927, 25 U.S.C. 81 15
81 Stat. 11, 24 U.S.C. 70v 20

MISCELLANEOUS AUTHORITIES

Federal Rules of Civil Procedure:

Rule 24(a) 2, 20
Rule 24(b) 20

Rules of the Supreme Court of the United States:

Rule 19 ..... 5, 7
Rule 23 15

Chief Justice Vinson, address before American Bar Association, September 7, 1949, 68 S.Ct. V, VI.... 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-984

THE WICHITA INDIAN TRIBE OF OKLAHOMA, ETC.,
Petitioners,

v.

THE UNITED STATES OF AMERICA, and
THE KIOWA, COMANCHE AND APACHE TRIBES OF INDIANS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Claims

---

BRIEF FOR THE KIOWA, COMANCHE AND APACHE TRIBES OF INDIANS IN OPPOSITION

QUESTION PRESENTED

Whether the Court of Claims properly held it would be an injustice to the respondent Tribes to allow petitioners to intervene in respondents' timely filed claims before the Indian Claims Commission, when petitioner Tribes sought intervention nearly 19 years after the statutory bar for presenting claims to that Commis-

sion, and when petitioners' claim is adverse to respondents' and may result in the defeat of respondents' claim, or any claim.

STATUTES INVOLVED

In addition to the provisions of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. 70, set out in Petitioners' Appendix F, the provisions providing for appeal to the Court of Claims, for filing of claims before the Commission by tribal members, for notice to the tribes of the provisions of the Act, and for investigation of claims, set out in Appendix 1 hereof, are pertinent.

The quoted rules of the Court of Claims relating to intervention (Pet. 5-6) certainly, and the Federal Rules of Civil Procedure, probably, have no effect upon the question presented.[1]

STATEMENT OF THE CASE

On August 9, 1951, the Kiowa, Comanche and Apache Tribes, respondents, filed timely petition before the Indian Claims Commission (Docket No. 257). By statute, all such claims are barred after August 13, 1951, and no pre-existing claim "may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by Congress," 60 Stat. 1049, 1052, 25 U.S.C. 70k.

---

[1] It is not understood why petitioners quote Rule 24(a) of the Federal Rules of Civil Procedure involving Intervention of Right, when they interpret the case cited by the Commission to support intervention here, *Lipan Apache* v. *United States*, 22 Ind. Cl. Comm. 1 (1969), (Pet. App. 1d), as a case of "permissive" intervention. (Pet. 20)

Various steps were taken in prosecuting the claims of these Tribal respondents before the Commission, until on February 13, 1970, they had filed a motion, supported by exhibits and argument, for summary judgment of recognized title to an area of land specifically described in the Treaty of October 18, 1865, 14 Stat. 717. This motion was set for hearing on April 13, 1970, but petitioners, on March 16, 1970, filed a motion to be allowed to intervene in order to press a pre-existing claim. The hearing was postponed, and, on February 10, 1971, over objection of the United States and these respondents, intervention was allowed. Pet. App. C. At the argument on respondents' motion for summary judgment of recognized title finally held on June 24, 1971, intervenors took the position that respondents' contentions were not "right."

On August 9, 1971, the Indian Claims Commission in a four to one decision granted respondent Tribes' motion for summary judgment of recognized title and held that in further proceedings they would determine the claim of petitioners.[2] 26 Ind. Cl. Comm. 101.

On November 9, 1971, the United States appealed to the Court of Claims asserting, among other things, that the Commission erred 1) in holding in favor of these Tribal respondents on their motion for summary judgment of recognized title, and 2) in allowing petitioners' untimely intervention.

On June 20, 1973, the Court of Claims unanimously held that the petitioners had improperly been allowed

---

[2] The petitioners are incorrect when they state (Pet. 13) that the Commission determined that the Wichita Tribe "in fact" had an interest in the lands which were held to be recognized.

to intervene, and, in a four to three decision, overruled the Commission's finding that the Treaty of October 18, 1865, (14 Stat. 717), granted recognized title, Appeal 12-71,—Ct. Cl.—479 F.2d 1369. The case was remanded to the Commission for a determination of respondents' alternative claim for aboriginal possession. Rehearings were denied by the Court of Claims. (Pet. App. B).

Petitioners' application for certiorari is directed only to the propriety of the disallowance of their intervention.[3]

The Court of Claims held that Wichita intervention was improperly allowed because 1) it was "filed with the Commission nearly twenty years after * * * [these respondents] filed their claim for relief" (Pet. App. 20a), and, consequently, their "claim has been forfeited by * * * failure to timely file with the Commission" (Pet. App. 21a), 2) the cases relied upon by petitioners[4] "do not show that a late intervenor may intervene in a claim where his interests are in direct conflict with those of the original claimant" (Pet. App. 21a), and 3) the late intervention "would work an injustice" as it might result in the defeat of respondents' timely filed claim, or "of any claim." (Pet. App. 22a).

---

[3] These respondents did not appeal to the Court of Claims and have not filed a petition for a writ of certiorari directed to the denial of the claim for recognized title by the Court of Claims. No waiver of rights under 60 Stat. 1049, 1054, 25 U.S.C. 70s (b) and (c) should be inferred.

[4] *Blackfeet & Gros Ventre Tribes* v. *United States*, 162 Ct. Cl. 136 (1963), *Snoqualmie Tribe of Indians* v. *United States*, 173 Ct. Cl. 570, 372 F. 2d 951 (1967).

ARGUMENT

Respondent tribes will show that a writ of certiorari should not be granted as 1) there is presented no conflict of decisions, 2) there is no important question of federal law involved, and 3) the decision of the Court of Claims is correct. (Rule 19)

I. THIS CASE PRESENTS NO CONFLICT OF DECISIONS.

Petitioners do not claim a conflict of decisions. Indeed, there can be none as the Court of Claims is charged with "exclusive jurisdiction to affirm, modify, or set aside" the determination of the Commission (60 Stat. 1049, 1054, 25 U.S.C. 70s(b); App. 1). The Court of Claims, since 1946, has been so charged with exclusive appellate jurisdiction. There has been a total of forty-six [5] cases acted upon by this Court under its appellate jurisdiction and only in three cases [6] has certiorari been granted, and in only two cases [7] has this court reversed. As will be shown hereinafter, the Court of Claims decisions on intervention are consistent and well considered.

II. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW INVOLVED.

Petitioners argue that the grant of a writ of certiorari "is very important" to them. (Pet. 27). It

---

[5] A complete listing of such applications for writs of certiorari and the actions of this Court thereon is set out in Appendix 2 hereof.

[6] *Creek Nation* v. *United States*, 370 U.S. 157, reh. denied, 371 U.S. 854 (1962); *Peoria Tribe of Indians of Oklahoma, et al.* v. *United States*, 390 U.S. 468 (1968); *United States* v. *Southern Ute Tribe or Band of Indians* 402 U.S. 159 (1971).

[7] *Peoria Tribe*, *supra*; *Southern Ute Tribe*, *supra*, which involved, respectively, the proper measure of damages, and the finality of a settlement, both subjects of paramount importance in the field.

may be assumed that every petitioner for a writ of certiorari believes that his case is important. This alone, however, is not grounds for granting the writ.[8]

Petitioners' only suggestion that any federal question is presented is an oblique reference to the fact that some tribes have and some have not, over the years, been allowed to intervene in actions before the Commission (Pet. 27-28), and that this Court should establish "definite guidelines for intervention in the Indian Claims Commission." (Pet. 18) There are two basic errors in this approach. First, Congress has given this rule-making power to the Commission,[9] subject only to the "exclusive jurisdiction" of the Court of Claims on appeal. Under the Act creating the Commission, this Court may only review "determinations of questions of law by the Court of Claims."[10] The Commission has been in existence since 1946, and has properly carried out this rule-making function, under the overall "exclusive" appellate jurisdiction of the Court of Claims, all as directed by Congress. Second, assuming, *arguendo*, power in this Court, it may be

---

[8] See address of Chief Justice Vinson before the American Bar Association on September 7, 1949, where he said "The Supreme Court is not, and never has been, primarily concerned with the correction of errors in lower court decisions. In almost all cases within the Court's appellate jurisdiction, the petitioner has already received one appellate review of the case." 69 S. Ct. V, VI.

[9] 60 Stat. 1049, 1051, 25 U.S.C. 70 h provides, "The Commission shall have power to establish its own rules of procedure."

[10] 60 Stat. 1049, 1054, 25 U.S.C. 70s(c). This statutory provision is a restriction upon this Court's general Court of Claims certiorari jurisdiction as set out in 62 Stat. 928, 28 U.S.C. 1255. *See United States* v. *Penn. Foundry & Mfg. Co.*, 337 U.S. 198, 207, n. 4, (1949). Cf. *United States* v. *Esnault-Pelterie*, 303 U.S. 26, 32 (1938).

questioned whether this Court should set out, as a matter of policy, to make rules or establish guidelines for all the multitude of federal agencies, tribunals, establishments, or commissions. There must be, after all, a limit to the ability of this Court to oversee all the minutiae of government.

Thus, there is no important federal question presented which should impel this Court, in the exercise of "sound judicial discretion," to grant this petition (Rule 19).

III. THE DECISION OF THE COURT OF CLAIMS IS CORRECT.

Petitioners state their application presents only "one principal issue which issue is whether it is correct or in error for the permitting of the Wichita Indian Tribe of Oklahoma to intervene in a pending timely filed claim approximately nineteen years after the normal running of the Statutes of Limitations * * *." (Pet. 16). Petitioners misinterpret the office of a writ of certiorari. It is not primarily to correct assumed errors in decisions of courts below.[11]

A. The Decision of the Court of Claims Is Correct.

Analysis of the decision by the Court of Claims in question shows that it is correct. The Court found the petition in intervention was "filed with the Commission nearly twenty years after * * * [respondent] Tribes filed their claim for relief" (Pet. App. 20a), and, consequently, their "claim has been forfeited by

---

[11] Petitioners do not suggest that there has been such a departure from accepted and usual course of judicial proceedings as to call for this Court's power of supervision. (Rule 19.2). See footnote 8, *supra*.

* * * failure to timely file with the Commission" (Pet. App. 21a).

The Indian Claims Commission was set up under a special jurisdictional act in which Congress waived "any statute of limitations or laches" (60 Stat. 1049, 1050, 25 U.S.C. 70a, Pet. App. 2f). In return for such waiver, and as a part of the enabling statute, Congress provided a definite jurisdictional limitation for the filing of claims before the Commission it created to hear Indian claims. The statute provided.

> "The Commission shall receive claims for a period of five years after August 13, 1946, and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress. (60 Stat. 1049, 1052, 25 U.S.C. 70k).

Petitioners on March 16, 1970, sought to file, in essence, a new claim[12] before the Commission asserting independent claims against the United States. The petitioners sought to be declared the aboriginal owners of only a portion of the area claimed, alternatively, by these respondents,[13] and, in addition, claimed damages for loss of personal property in no way involved in

---

[12] See Pet. App. 18, where the complaint in intervention is stated, alternatively, to be "An Original Petition," and 44g, where it is described as "a new cause of action."

[13] Petitioners sought by amendment to enlarge their aboriginal claim from 13,200,000 acres all within respondents' claim area, to 40,000,000 acres and then to 60,000,000 acres with the additional areas outside of respondents' claim area. The amendments related to claims largely not within the aboriginal claims of these respondents.

respondents' timely claim.[14] Congress had prescribed that such claims might not be presented after August 13, 1951. This is jurisdictional.[15] When Congress creates a new liability with specific provisions on the time within which such rights may be sought, compliance with such limitations are essential to the assertion of the liability. *United States ex rel. Texas P. Coal Co.* v. *McCord*, 223 U.S. 157, 162 (1914).

Petitioners freely admit that their claims are adverse to those of these respondents (See Question Presented, Pet. 3-4; last par., Pet. 23). The Court of Claims correctly analyzed the situation created by the almost 19 year delay by petitioners in presenting their claim, as follows:

> "The result we would reach if we adopted the intervenors reasoning would be to allow a party, too late to file his own claim, to obtain a hearing by appending his claim to that of another party, timely filed, whose claim he seeks to defeat. It is not a question of one or the other party getting an award admittedly due someone. The proofs adduced on behalf of the Wichitas could easily demonstrate that no one had exclusive control of the tract to which the Kiowas and their group claim aboriginal title, or of parts thereof. The Wichita Indian Tribe of Oklahoma and Affiliated Bands could have timely filed their claim with the Indian Claims Commission. They did not. It would work an injustice to allow them to join in a timely

---

[14] The petitioners allege in their complaint in intervention a claim for $200,000 against the United States for alleged wrongful loss of livestock, which is unrelated in any way to these respondents' claim. See pars. XXXVI, XXXVII, and par. 3 of request for relief, Pet. App. 32g-34g, 44g.

[15] *United States* v. *Seminole Nation*, 299 U.S. 417 (1937).

filed suit by the Appellees when the result of that intervention may be the defeat of the Appellees claim, and of any claim." (Pet. App. 21a, 21b)

B. The Cases Relied Upon by Petitioners Do Not Support Late Intervention by One Claiming Adversely to the Timely Claimant.

The petitioners below urged the propriety of their intervention based upon the cases of *Blackfeet & Gros Ventre Tribes* v. *United States*, 162 Ct. Cl. 136 (1963), *Snoqualmie Tribe of Indians* v. *United States*, 178 Ct. Cl. 570, 372 F. 2d 951 (1967); and *Lipan Apache Tribe* v. *United States*, 22 Ind. Cl. Comm. 1 (1969) (Pet. App. 21a). Here, petitioners admit that their case "depends upon" the *Blackfeet* and *Snoqualmie* decisions. (Pet. 21)

The Court of Claims correctly analyzed its own *Blackfeet* and *Snoqualmie* decisions when it said that in those cases

> "we took pains to show that no intervenor was claiming adversely to the timely claimant. In both cases the litigations involved Treaties to which the intervenors were joint parties."[16]

Here, of course, petitioners' claims are adverse to Tribal respondents. (Pet. 3, 23)

In *Blackfeet*, supra, the Court of Claims passed upon the propriety of a late intervention by the Assiniboine Tribe which arose when the attorneys who were representing both Tribes determined that it could no longer represent the Assiniboines. The Blackfeet and Gros Ventres Tribes, the original timely claimants, "themselves originally moved to include the Assini-

---

[16] — Ct. Cl. —, 479 F. 2d 1369, 1377 (1973), Pet. App. 21a. The analysis at pages 21 to 27 of the petition does not show the conclusion of the Court of Claims to be wrong. See pp. 15-21, *infra*.

joines as petitioners * * *."[17] Both tribes were signatories to the same Treaty from which it was claimed the rights of each identically arose. Their interests, if any, were mathematically proportional to their population. Under those facts, the Court of Claims held that the late intervenors "may have a common and undivided interest" with the original plaintiffs, and that the intervenors "are not asserting a new or separate claim which would be untimely under section 12 of the Act." 60 Stat. 1049, 1052, 25 U.S.C. 70k; 162 Ct. Cl. 136, at 144.

Here, intervenors admit, and the Court of Claims found, their claim is adverse to those tribes whose claims were timely. Here intervenors are asesrting a new and separate claim. It is of interest to note that Judges Durfee and Davis who sat on the Court of Claims in *Blackfeet* joined in the unanimous Court that decided intervention was not proper in the case at bar.

In addition to the bar of the statute of limitations, *Blackfeet* is authority that a late intervenor can also be barred by laches. 162 Ct. Cl. 136, at 138 and 143. Here, petitioners are guilty of laches in attempting to assert a claim in another suit nearly 19 years after the limitations period has expired. Although the Court of Claims below did not expressly invoke the doctrine of laches, the opinion shows, *a fortiori*, that this doctrine is applicable.

While *Snoqualmie*, 178 Ct. Cl. 570, 372 F. 2d 951 (1967), was admittedly[18] not an intervention case,

[17] 162 Ct. Cl. 136, at 139.

[18] The petitioners recognized that *Snoqualmie* "was not directly on intervention." (Pet. 26)

petitioners see an analogy. The question arose in that case when the attorney for the Snoqualmie Tribe concluded that the Skykomish Tribe was either a subgroup or became merged with the Snoqualmie. At trial he attempted to show this and to prove aboriginal title on the part of both Tribes. A motion to amend the petition to conform to the proof was originally allowed, but finally denied. The denial was based upon the premise that the Skykomish Tribe was a separate entity and, consequently, that the Commission lacked jurisdiction to entertain their claim as the proposed amendment to the petition was made after August 13, 1951, the cut-off date for presentation of claims to the Commission. The Court of Claims reversed and held that the Snoqualmie amendment should have been allowed because 1) the Skykomish claim was presented before August 13, 1951, in the original petition of the Snoqualmie because the Skykomish claim arose out of an 1855 Treaty which was the common transaction complained of in this petition, 2) the Snoqualmie Tribe was the only claimant before the Commission, 3) the government received adequate timely notice of the Skykomish claim in the timely filed petition, and 4) the government would not be prejudiced by the Snoqualmie's "tardiness in clarifying its position." 178 Ct. Cl. at 589, 372 F. 2d at 961. The Court made it clear that there were no conflicting claims between the Snoqualmie and the Skykomish Tribes.[19]

In *Snoqualmie* the Court of Claims anticipated its decision in the case at bar. In acknowledging that "there is much in the government's argument" the Court stated, "we would have greater difficulty allow-

[19] The Court found "There are no conflicting claims." 178 Ct. Cl. 570, at 575, 372 F. 2d 951, at 953.

ing the amendment if we thought it was brought by an entirely unrelated party even though it arose out of the same transaction." 178 Ct. Cl. 570, at 589, 372 F. 2d 951, at 961.

Snoqualmie, thus, supports the decision at bar. Unlike *Snoqualmie*, in the case at bar 1) there was no Wichita claim presented to the Commission until nearly 19 years after filing of claims were barred, 2) the Kiowa, Comanche and Apache Tribes were not the only claimants before the Commission, as the Wichita and Affiliated Tribes sought to be present in their own right, 3) neither the government nor these respondents had any notice of the Wichita claim as it was not presented in the timely filed petition of the Kiowa, Comanche and Apache Tribes, 4) the government and these respondents may be prejudiced by the tardy intervention, and 5) there is an admitted conflict between petitioners, the respondents and the government.[29] Chief Judge Cowan and Judge Davis, sitting in *Snoqualmie* also joined in the unanimous opinion in the case at bar.

It is, thus, apparent that neither *Blackfeet* nor *Snoqualmie* support petitioners' position. Just the contrary.

The Commission cited *Lipan Apache Tribe* v. *United States*, 22 Ind. Cl. Comm. 1 (1969), as its sole authority for the intervention which the Court of Claims reversed. In *Lipan*, the Commission allowed late intervention for three stated reasons 1) intervenors'

[29] Petitioners state "The Wichita Tribe does not claim that it has a joint interest with the Kiowa, Comanche and Apache Tribes, but the Wichita Tribe claims that it is the rightful aboriginal owner to the same area that the Kiowa, Comanche and Apache Tribes are claiming to be aboriginal owners of." (Pet. 23).

claims would not diminish original claimants' recovery, 2) the government's liability would not be increased, and 3) the government had no objection if the Commission found it had jurisdiction to allow the late intervention (22 Ind. Cl. Comm. 1, Pet. App. 3d). In the case at bar just the opposite is true, that is 1) the petitioners' intervention might defeat the respondent tribes' claims,[21] 2) the government's liability might be increased,[22] and 3) the government did and does object to this intervention.

In *Lipan*, the Commission cited *Blackfeet* and *Snoqualmie*, *supra*, as supporting the intervention there sought. As shown, those cases did not involve adverse claimants, as here. As the governing facts and law in *Lipan* are opposite to the case at bar, the Commission's reliance thereon to support this late intervention was misplaced, and the Court of Claims properly so found.

In summary, the propriety of intervention depends peculiarly upon the facts of each case. In the light of the facts and applicable law, it is plain to see why the Court of Claims concluded that to allow this intervention, nearly 20 years after respondents' claims were filed and the statutory period for filing claims had expired, "would work an injustice" on respondent Tribes. The Court of Claims, therefore, properly reversed the order of the Commission allowing petitioners' intervention.

---

[21] The Court of Claims stated "It would work an injustice to allow them to join in a timely filed suit by the Appellees when the result of that intervention may be the defeat of the Appellees' claim, and of any claim." (Pet. App. 22a).

[22] See Note 13, *supra*.

C. The Contentions Made by Petitioners To Show Error Below Are Insubstantial.

The petition presents arguments and states positions that are contrary to law, common sense, and fact. It is confusing and defies ready analysis. It certainly does not "present with accuracy, brevity, and clearness" the points requiring consideration, as dictated by Rule 23.4 of this Court.

Analysis of the petition shows its many errors.

1. The basic argument in support of the propriety of its untimely intervention is that intervenor Tribes did not have counsel until they sought intervention. The fact is that the contract with present counsel for intervenors was officially approved pursuant to 72 Stat. 927, 25 U.S.C. 81, on June 11, 1968. From that date until filing the motion for intervention on March 16, 1970, such counsel engaged in representations before Congress in efforts to secure legislation permitting petitioners to file claims in the Indian Claims Commission notwithstanding the jurisdictional bar of limitations set out in 60 Stat. 1049, 1052, 25 U.S.C. 70k. On February 27, 1969, H.R. 7927 (91st Congress, 1st Session) was introduced in the House of Representatives, and on March 11, 1969, S. 1501 (*Id.*) was introduced in the Senate. S. 1501 is set out as Appendix 3 hereinafter. If enacted, these identical bills would have given petitioners the right to file their claims before the Commission within one year of enactment "notwithstanding the lapse of time or any statute of limitations." While both bills were referred to committee, no further action was taken by Congress. Petitioners, thus, spent almost two years in efforts to secure legislation to remove what they, logically, assumed was the legal jurisdictional bar of limitations.

But the absence of counsel does not excuse failure to file a timely claim before the Commission. The statute creating the Commission required notice of its provisions to be sent to each Tribe of Indians (60 Stat. 1049, 1052, 25 U.S.C. 70l; App. 1) and the record shows that the Wichita Tribe was aware of the existence and purposes of the Act well before their claims were barred.[23] The Act specifically allows the presentation of a claim to the Commission by any member of a tribe (60 Stat. 1049, 1052, 25 U.S.C. 70i; App. 1).[24] The General Rules of Procedure of the Commission in effect August 13, 1951, provided for the filing of claims by any tribe or any member of the tribe without necessity for counsel. Appendix 4 sets out the applicable provisions. Indeed, the Act provided that a "detailed statement of all claims be sent to the Commission" and that there be established an Investigation Division to investigate claims referred to it by the Commission, with the further requirement that that Division make available "to the Indians concerned" any data relating to the claims. (69 Stat. 1049, 1052, 25 U.S.C. 70 l(a) and (b); (App. 1). At page 21 of Exhibit A to the complaint in Intervention petitioners quote from an Annual Report of the Indian Claims Commission as follows:

> "The [Investigation] Division has been active in the investigation of cases where no attorney of record represents the claimants."

---

[23] See Pet. App. 49g, where it is shown that the Wichita Tribe was aware at least "sometime in 1950" of the existence of the deadline of August 13, 1951, for filing their claims before the Commission. See also 51g, *id.* No attempt is made to show that the Affiliated Tribes ever sought to obtain counsel before 1968.

[24] *Seneca Nation of Indians on the relation of John L. Snyder and Arline A. Friday* v. *United States*, 122 Ct. Cl. 163 (1952).

The possibility of presenting timely claim without the necessity of counsel was, therefore, presented to petitioners. Mr. Lyle R. Griffis, who was then attorney-adviser with the Bureau of Indian Affairs, assigned to the local office servicing petitioners, in the letter relied upon by petitioners', states as much when he concluded

> "As a result, *the deadline date passed without the Wichita Tribe having filed any claims before the Commission* or having engaged counsel to represent them in the assertion of such claims." (Emphasis supplied. Pet. App. 64g).

2. On page 15 petitioners state that if a writ of certiorari is not granted they will have no legal recourse for asserting a claim for loss of "treaty title" lands. The Court of Claims denied any claim petitioners have to "treaty title" lands, and petitioners have not applied for a writ of certiorari directed to that action. This point, therefore, is invalid.[25]

3. Petitioners cite *C. W. McGhee, et al.* v. *The Creek Nation and the United States*, 122 Ct. Cl. 380, cert. den. 344 U.S. 856 (1952), as supporting their argument for late intervention (Pet. 16). In *McGhee* the motion for leave to intervene was filed on January 5, 1951, six months before August 13, 1951, the date of expiration of the statutory bar for presenting claims. The decision, therefore, is inapposite.

4. In *Joseph Chitto, et al.* v. *United States*, 133 Ct. Cl. 643, 138 F. Supp. 253, cert. den., 352 U.S. 841 (1956), relied upon by petitioners (Pet. 17), the Court

---

[25] Petitioners' reliance upon respondents to protect their interest in the recognized title claim, as is suggested at Pet. 15, is misplaced. The reversal on recognized title is interlocutory as to these respondents.

of Claims properly allowed intervention of the Choctaw Nation made upon a showing that the United States had indicated that it would satisfy any judgment rendered in favor of the original plaintiffs out of funds of that Nation on deposit in the United States Treasury. This is not analogous to the case at bar.

5. Petitioners' erroneous concept of the applicable law is again exemplified at pages 25 and 26 of the petition. They argue (p. 25) that the Federal Rules of Civil Procedure on intervention should be followed by the Commission, and then, amazingly, state (p. 26) that, while intervention must be timely, there is no requirement in those Rules that there be no injustice to the timely claimant by a late filing. Assuming the applicability of the Rules,[26] petitioners overlook the last sentence of Rule 24(b), which recites,

> "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

6. Petitioners' real complaint (Pet. 27) is that if they are barred from appending their late claim to the

---

[26] Petitioners admit that there are no rules of the Commission on intervention (Pet. 18). The Commission rules do not incorporate the Federal Rules of Civil Procedure. The Court of Claims, in *Seminole Indians of the State of Florida* v. *United States*, 200 Ct. Cl. 411 471 F.2d 614 (1973), recognized that the Commission could, with propriety, adopt such of the Federal Rules of Civil Procedure, as it deemed appropriate, except that it may not adopt rules contrary to the language of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. 70. See footnote 2,200 Ct. Cl. at 424, 471 F.2d at 617. Here, of course, the Commission could not adopt a rule that would in any way circumvent the finality of the statutory time limit for presenting claims.

timely filed petition of these respondents they may lose a third opportunity to press a claim which has been twice held to be without merit on the facts by the Court of Claims. *Choctaw and Chickasaw Nations, et al.* v. *United States*, 34 Ct. Cl. 17, reversed, 179 U.S. 494 (1900), *Wichita Tribe, et al.* v. *United States*, 89 Ct. Cl. 378 (1939). Although, in each case the conclusion that the petitioners could not sustain the claim of aboriginal possession there advanced was without the jurisdiction of the Court of Claims, the careful factual findings against such possession is conclusively against petitioners on the merits.[27]

7. At page 29 of the petition the assertion is made that the Congress has extended the Commission's life from 1956 to 1977, without an extension of the time for filing claims beyond the original date of August 13, 1951. This fact tends to show Congressional intent that the limitations bar should be strictly enforced, rather than the contrary. In the same argument, at page 30, petitioners make the incredible statement that intervention is allowed by the Commission only when it is "of the opinion that the intervening claimants apparently have just claims * * *." Petitioners would convert a mere claim in a petition into a holding on the justice of the claim.[28]

---

[27] Petitioners' suggestion (Pet. App. 17g, 58g-60g) that counsel refrained from representing them in 1950 and 1951, on the ground that the cases just cited are *res judicata*, so far as undersigned counsel is involved, is not true.

[28] The Court of Claims correctly held in *Clyde F. Thompson, et al.* v. *United States*, 122 Ct. Cl. 348, 356, cert. denied, 344 U.S. 856 (1952), that "For jurisdictional purposes, which related only to the authority to entertain the petition and to hear and determine claims, the merits and the nature of the proof that will be required to establish the claims, are not involved."

Of like invalidity is the specious reasoning that because the intervenors borrowed money from the government to finance litigation that the government "had considerable faith in the validity of the [petitioners'] claims." (Pet. 34). Equally frivolous would be the argument that because the government was presently paying the expenses of the Department of Justice to oppose their intervention that petitioners' claim was unfounded.

8. Petitioners make the astonishing argument that "perhaps" the Commission allowed intervention below because this Court, in the exercise of its original constitutional jurisdiction, might, *sua sponte*, order that other States be given an opportunity to join in a suit by the government against a single State. (Pet. 30). There is a difference between the constitutional original jurisdiction of this Court and the statutory jurisdiction of the Commission. It does the Commission little credit to assume, as petitioners do, that it allowed intervention under the constitutional original jurisdiction given exclusively to this Court.

9. Petitioners cite *Hodgson* v. *United Mine Workers of America*, 473 F.2d 118 (1972), as supporting their position (Pet. 34). *Hodgson* was a case of intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure. Petitioners admit (p. 20) that their intervention was "permissive," i.e., under Rule 24(b). There is a difference.

10. Petitioners at page 35 quote, out of context and in a manner which might mislead, a portion of the legislative history of an Act which extended the time for concluding claims before the Commission (81 Stat. 11, 25 U.S.C. 70v). In the third paragraph on page

35, the implication is covert that the Assistant Secretary of the Interior was then speaking of petitioner Tribes, or, at least, of tribes who sought to be heard notwithstanding their failure to make timely claims. Reference to the complete text of the letter (Pet. App. H), shows that the language petitioner chooses to invoke related to timely claims of tribes who were then in the process of litigating such claims. When considered in the proper light, this quotation shows proper concern for those who had acted pursuant to law in presenting their claims, and was not intended to benefit the dilatory.

Petitioners' arguments in support of its position here are, therefore, not persuasive. The Court of Claims correctly decided the case below.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully,

J. Roy Thompson, Jr.
400 Union Trust Building
Washington, D.C. 20005
Attorney for Respondents, The Kiowa, Comanche and Apache Tribes of Indians.

January, 1974

APPENDIX 1

Additional Pertinent Provisions of Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. 70, et seq.

§ 70i. Presentation of Claims

Any claim within the provisions of this chapter may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission. (60 Stat. 1052, 25 U.S.C. 70i)

* * * *

§70l. Notice to tribes; investigation of claims; availability of data

(a) As soon as practicable the Commission shall send a written explanation of the provisions of this chapter to the recognized head of each Indian tribe and band, and to any other identifiable groups of American Indians existing as distinct entities, residing within the territorial limits of the Unted States and Alaska, and to the superintendents of all Indian agencies, who shall promulgate the same, and shall request that a detailed statement of all claims be sent to the Commission, together with the names of aged or invalid Indians from whom depositions should be taken immediately and a summary of their proposed testimonies.

(b) The Commission shall establish an Investigation Division to investigate all claims referred to it by the Commission for the purpose of discovering the facts relating thereto. The Division shall make a complete and

thorough search for all evidence affecting each claim, utilizing all documents and records in the possession of the Court of Claims and the several Government departments, and shall submit such evidence to the Commission. The Division shall make available to the Indians concerned and to any interested Federal agency any data in its possession relating to the rights and claims of any Indian. (60 Stat. 1052, 25 U.S.C. 70 l)

* * * *

§70s. Review by Court of Claims and Supreme Court

* * * *

(b) When the final determination of the Commission has been filed with the clerk of said Commission the clerk shall give notice of the filing of such determination to the parties to the proceeding in manner and form as directed by the Commission. At any time within three months from the date of the filing of the determination of the Commission with the clerk either party may appeal from the determination of the Commission to the Court of Claims, which Court shall have exclusive jurisdiction to affirm, modify, or set aside such final determination. In similar manner and with like effect either party may appeal to the Court of Claims from any interlocutory determination by the Commission establishing the liability of the United States notwithstanding such determination is not for any reason whatever final as to the amount of recovery; and any such interlocutory appeal shall be taken on or before January 1, 1961, or three months from such interlocutory determination, whichever is later: *Provided*, That the failure of either party to appeal from any such interlocutory determination shall not constitute a waiver of its right to challenge such interlocutory determination in any appeal from any final determination subsequently made in the case. On said appeal the Court shall determine whether the findings of fact of the Commission are supported by substantial evidence, in which event they shall be conclusive, and also whether the conclusions of law,

including any conclusions respecting "fair and honorable dealings", where applicable, stated by the Commission as a basis for its final determination, are valid and supported by the Commission's findings of fact. In making the foregoing determinations, the Court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error. The Court may at any time remand the cause to the Commission for such further proceedings as it may direct, not inconsistent with the foregoing provisions of this section. The Court shall promulgate such rules of practice as it may find necessary to carry out the foregoing provisions of this section. (60 Stat. 1054, 25 U.S.C. 70s(b)

APPENDIX 2

Table Showing Action by the Supreme Court of the United States on All Prior Petitions for Writs of Certiorari to the Court of Claims on Indian Cases Appealed from the Indian Claims Commission

Title of Case	Certiorari Action by Supreme Court
1. Eastern (Emigrant) Cherokee Indians ex rel. Nash v. United States	Denied, 340 U.S. 903
2. Western (Old Settler) Cherokee Indians ex. rel. Owen v. United States	Denied, 340 U.S. 904
3. United States v. Loyal Band or Group of Creek Indians	Denied, 342 U.S. 813
4. United States v. Osage Nation of Indians	Denied, 342 U.S. 896
5. Choctaw Nation v. United States	Denied, 343 U.S. 955

Title of Case	Certiorari Action by Supreme Court
6. Creek Nation v. C. W. McGhee, et al.	Denied, 344 U.S. 856
7. United States v. C. W. McGhee, et al.	Denied, 344 U.S. 856
8. United States v. Clyde F. Thompson (Indians of California)	Denied, 344 U.S. 856
9. United States v. Risling (Indians of California)	Denied, 344 U.S. 856
10. Blackfeet and Gros Ventre Tribes of Indians v. United States	Denied, 348 U.S. 835
11. Assiniboine Indian Tribe v. United States	Denied, 348 U.S. 863
12. United States v. Otoe & Missouria Tribe of Indians	Denied, 350 U.S. 848
13. Choctaw Nation v. United States	Denied, 352 U.S. 825
14. Joseph Chitto, ex rel. Choctaw Indians East of Mississippi River v. United States	Denied, 352 U.S. 841
15. Yuchi (Euchee) Tribe of Indians, et al. v. United States	Denied, 352 U.S. 1016 Rehearing denied, 353 U.S. 919 Motion for leave to file second petition for rehearing denied, 353 U.S. 948

Title of Case	Certiorari Action by Supreme Court
16. Ingraham Billie, ex rel. Miccosukee Seminole Indians v. Seminole Indians of the State of Florida	Denied, 355 U.S. 843
17. Hannahville Indian Community, et al. v. Prairie Bond of Potawatomi Indians et al.	Denied, 359 U.S. 908
18. United States v. Kiowa, Comanche & Apache Tribes of Indians	Denied, 359 U.S. 934
19. Kiowa, Comanche & Apache Tribes of Indians v. United States	Denied, 359 U.S. 934
20. Makah Indian Tribe v. United States	Denied, 365 U.S. 879
21. United States v. Miami Tribe of Oklahoma	Denied, 366 U.S. 924
22. United States v. Crow Tribe of Indians	Denied, 366 U.S. 924
23. United States v. Absentee Shawnee Tribe of Oklahoma	Denied, 366 U.S. 924
24. Creek Nation v. United States	Granted, 368 U.S. 811 (Affirmed, 370 U.S. 157)
25. Pueblo dePecos, et al. v. United States	Denied, 368 U.S. 821
26. Pueblo deIsleta v. United States	Denied, 368 U.S. 822

Title of Case	Certiorari Action by Supreme Court
27. Sioux Tribe of Indians, etc. v. United States	Denied, 375 U.S. 825
28. Sac & Fox Tribe of Indians of Oklahoma v. United States	Denied, 375 U.S. 921
29. Nooksack Tribe of Indians, etc. v. United States	Denied, 375 U.S. 993
30. Creek Nation East of the Mississippi v. United States	Denied, 379 U.S. 846 Rehearing denied, 379 U.S. 918
31. Ottawa Tribe, et al. v. United States	Denied, 379 U.S. 929
32. Oneida Tribe of Indians of Wisconsin v. United States	Denied, 379 U.S. 946
33. Quechan Tribe of Fort Yuma Reservation v. United States	Denied, 379 U.S. 971
34. Muckleshoot Tribe of Indians v. United States	Denied, 385 U.S. 847
35. Nez Perce Tribe of Indians v. United States	Denied, 386 U.S. 984 Clarification denied, 386 U.S. 1015
36. Peoria Tribe of Indians of Oklahoma v. United States	Granted, 389 U.S. 814 (Reversed, 390 U.S. 468)
37. Iowa Tribe, etc. v. United States	Denied, 389 U.S. 900

Title of Case	Certiorari Action by Supreme Court
38. United States v. Sac & Fox Tribe of Indians of Oklahoma	Denied, 389 U.S. 900
39. Citizen Band of Potawatomi, etc. v. United States	Denied, 389 U.S. 1046
40. Hannahville Indian Community, et al. v. United States	Denied, 390 U.S. 957
41. Gila River Pima-Maricopa Indian Community v. United States	Denied, 400 U.S. 819
42. United States v. Southern Ute Tribe or Band of Indians	Granted, 400 U.S. 915 (Reversed, 402 U.S. 159)
43. Nez Perce Tribe of Indians v. United States	Denied, 404 U.S. 872
44. Iowa Tribe of the Iowa Reservation, etc. v. United States	Denied, 404 U.S. 1017
45. The Creek Nation v. United States	Denied, 406 U.S. 929
46. Ira Sylvester Godfroy, et al. v. United States	Denied, October 9, 1973 ——U.S.——

APPENDIX 3

91ST CONGRESS
1ST SESSION

S. 1501

IN THE SENATE OF THE UNITED STATES

March 11 (legislative day, March 7), 1969

MR. HARRIS (for himself and MR. BELLMON) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

---

A BILL

Authorizing the Wichita Indian Tribe of Oklahoma, together with its affiliated bands and groups of Indians, to file with the Indian Claims Commission within one year any and all claims of said tribe against the United States, and repealing any law inconsistent to this Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Wichita Indian Tribe of Oklahoma and bands and groups of Indians which have been or which are affiliated with the Wichita Indian Tribe of Oklahoma, including but not limited to the Wichitas, Wacos, Keechis, and Towaconies, may file with the Indian Claims Commission any and all claims that they now have or may have had, against the United States, pursuant to jurisdiction conferred upon the Indian Claims Commission, to hear and determine the claims of Indian tribes, bands or groups of American Indians that accrued prior to August 13, 1946, against the United States, as provided in the Act of

August 13, 1946 (60 Stat. 1049, 1055), as amended and supplemented, Act of July 24, 1956 (70 Stat. 624), Act of June 16, 1961 (75 Stat. 92), Act of November 4, 1963 (77 Stat. 301), Act of September 19, 1966 (80 Stat. 814), and Act of April 10, 1967 (81 Stat. 11) (25 U.S.C. 70-70v-1).

SEC. 2. Such claims may be instituted and filed at any time within one year after the passage of this Act, notwithstanding the lapse of time or any statute of limitations.

SEC. 3. All provisions of law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency.

91ST CONGRESS
1ST SESSION

S. 1501

A BILL

Authorizing the Wichita Indian Tribe of Oklahoma, together with its affiliated bands and groups of Indians, to file with the Indian Claims Commission within one year any and all claims of said tribe against the United States, and repealing any law inconsistent to this Act, and for other purposes.

By MR. HARRIS and MR. BELLMON

March 11 (legislative day, March 7), 1969

Read twice and referred to the Committee on Interior and Insular Affairs

APPENDIX 4

Extracts from Code of Federal Regulations, 1949 Edition, Title 25, Indians, Chapter III Indian Claims Commission, Part 503.

AUTHORITY: §§ 503.1 to 503.40 issued under sec. 9, 60 Stat. 1051; 25 U.S.C. 70h.

SOURCE: §§503.1 to 503.40 appear at 12 F.R. 4387.

§ 503.1 *Petitioners.* (a) Claims within the jurisdiction of the Indian Claims Commission of the United States (60 Stat. 1049), hereafter referred to in this part as the Commission, may be presented by any Indian tribe, band or other identifiable group of Indians.

(b) Claims by Indian tribes, bands or groups which have tribal organizations recognized by the Secretary of the Interior as having authority to represent such tribe, band or group shall be filed and presented by the duly appointed or elected officers of such organization, except as provided in paragraph (c) of this section.

(c) Where by virtue of fraud, collusion or laches on the part of a recognized tribal organization a claim has not been presented (or has not been included as part of a presented claim), any member of such tribe, band or group may file claim on behalf of all the other members of such tribe, band or group upon complying with the provisions of § 503.8 (a).

(d) Claims on behalf of any unorganized tribe, band or other identifiable group may be filed by any member of such tribe, band or identifiable group as the representative of all its members. (p. 377)

* * * *

§503.8 *Capacity.* (a) Petitions filed by any tribal organization recognized by the Secretary of the Interior as having authority to represent a tribe, band or group need not aver the capacity of such organization to sue except to the extent required to show the jurisdiction of the Com-

mission. When the United States desires to raise an issue as to the capacity of such a recognized tribal organization to sue, it shall do so by specific negative averments, which shall include supporting particulars.

(b) If a petition is filed by one or more members of a tribe, band or other identifiable group having a tribal organization which is recognized by the Secretary of the Interior because the tribal organization has failed or refused to take any action authorized by the act, the petition shall be verified and shall aver that the petitioner is a member of the tribe, band or group. The petitioner shall also set forth with particularity the efforts of the petitioner to secure from the duly constituted and recognized officers of said tribal organization such action as he desires and the reasons for his failure to obtain such action (such as fraud, collusion or laches) or the reasons for not making such effort.

(c) Petitions filed by one or more members on behalf of an unorganized tribe, band or other identifiable group shall be verified and shall aver (1) that the petition or petitioners are members of the tribe, band or group (2) a description of the unorganized tribe, band or group of sufficient comprehension to identify the tribe, band or group on whose behalf the petition is filed. (p. 380)

* * * *

§ 503.9 *Form of pleadings—(a) Caption; names of parties.* Every pleading shall contain a caption setting forth the name of the Commission, and the title of the action, and a designation as in §503.6(a). A petition filed on behalf of a tribal organization under the provisions of § 503.1 (b) shall be commenced in the name of such tribe, band or group. A petition filed on behalf of an organized tribe, band or group under the provisions of § 503.1 (c), or an unorganized group under § 503.1 (d), shall be in the name of the member or members filing the same on the

relation of the tribe, band or group. In the petition, the title of the action shall include the names of all the parties, but in other pleadings it shall be unnecessary to name more than one of the petitioners. (p. 380)

* * * *

§ 503.10 *Signing of pleadings*—(a) *Petitioner.* Every pleading of a party other than the United States represented by an attorney shall be signed by the attorney of record, designated under § 503.35 in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign its pleading and state its address. (p. 380)